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SUMMARY RECORD OF THE 27th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 4 April 1996, at 3 p.m.

Chairman: Mr. VERGNE SABOIA (Brazil)

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The meeting was called to order at 3.10 p.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

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(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (agenda item 8) (continued)

(E/CN.4/1996/5-E/CN.4/Sub.2/1995/36; E/CN.4/1996/28 and Corr.1, 29 and Add.1, 2 and 3, 30, 31 and Add.1, 32 and Add.1, 33 and Add.1, 34, 35 and Add.1 and Corr.1 and Add.2, 36, 37, 38 and Corr.1, 39 and Add.1 and 2, 40 and Add.1, 41, 121, 122, 123, 124, 133 and 143; E/CN.4/1996/NGO/10, 24, 25, 26, 36, 46, 55 and 61; E/CN.4/Sub.2/1995/20 and Corr.1 and Add.1, 30 and Add.1; E/CN.4/1995/100; A/50/512)

1. Mr. ANWAR (World Federation of Democratic Youth) drew the Commission's attention to the fate of the members of the Mohajir nation who were being persecuted by the State of Pakistan in urban centres of Sind, in particular, Karachi and Hyderabad. In particular, militants of the political party which represented them, the Mohajir Qaumi Movement (MQM), were being brutally tortured while in custody; the methods used were described by the Special Rapporteur on Torture, Mr. Rodley, in paragraph 117 of his report (E/CN.4/1996/35). As an example, reference could be made to the case of two MQM members, one of whom had been savagely tortured for 23 days to force him to make a confession and to read a pre-written statement on State television in order to tarnish the image of the MQM and the Mohajir nation. Such so-called "confessions" were a flagrant violation not only of article 13 of the Constitution, which provided a guarantee against self-incrimination, but also of sections 164 and 364 of the Code of Criminal Procedure, under which confessions by accused persons could be made only in the presence of a judge, in a public courtroom and in the presence of counsel. The Pakistani Government was thus prepared to violate the Constitution and the laws of the country in order to defame the Mohajir nation.

2. The Mohajirs were also the principal victims of extrajudicial, summary or arbitrary executions in Pakistan. Six Mohajirs had been executed with impunity between 30 March and 1 April, in other words, during the current session of the Commission. The Special Rapporteur on the question, Mr. Bacre Waly Ndiaye, had noted in his report (E/CN.4/1996/4) the large numbers of deaths in custody (para. 372) and had expressed great concern at the terrorist acts of the group, Haqiqi, a rival faction of the MQM which, he said, was in fact controlled by the Pakistani army and whose goal was to split the MQM and weaken the Mohajir nation. In the face of such State terrorism, it was not surprising that some Mohajirs, particularly the younger generation,

should be driven by anger and despair to violent retaliation. While the Mohajir nation and the MQM strongly condemned such acts, they understood the motives for them.

3. The World Federation of Democratic Youth urged the Commission to press the Government of Pakistan to ratify the International Covenants on Human Rights, the Convention against Torture, and other relevant instruments, and to facilitate the granting of fundamental and constitutional rights to the Mohajir nation. It also asked the Commission to appoint a special rapporteur to investigate and report to it on State terrorism against the Mohajir nation.

4. Mr. CIURLIZZA (Andean Commission of Jurists) said that, in most countries of the Andean region, the process of legal reform had produced only partial results in areas such as the appointment of judges or the simplification of legal procedures, which could facilitate the modernization of the legal systems of those countries. However, almost nothing had been done with regard to the courts' consideration of human rights violations and to excessive recourse to emergency legislation, including the use of the military courts, which allowed State officials responsible for such violations to avoid all punishment. That impunity took on particular importance with the adoption of legislation such as the Peruvian amnesty law, which halted prosecution of those responsible for such crimes and thereby constituted a flagrant violation of the principle of the independence of the judiciary.

5. With regard to legal guarantees, the reform had changed almost nothing in countries such as Colombia and Peru. Individuals accused of violating the public safety laws were still given summary trials, often by "faceless judges", which was an offence against the right to due process. There was still a very high percentage of detentions without trial in Bolivia, Peru and Venezuela. Urgent measures must be taken to resolve that serious problem, which was a violation of the right to a speedy trial that respected the guarantees provided under the law. For example, it would be possible to develop a system of monitoring judges responsible for expediting the legal procedures related to imprisonment. Consideration might also be given to making greater use of justices of the peace, who already existed in Peru, in resolving disputes which required a prior knowledge of local customs. Constitutional courts and ombudsmen were also important institutions and mechanisms for guaranteeing the right to justice by controlling the abuse of authority.

6. The Andean Commission of Jurists felt that the international community should support those concrete proposals. For its part, it was cooperating with the United Nations High Commissioner for Human Rights to develop projects involving the judges, ombudsmen and police of the region so that those three important institutions could integrate protection of the internationally recognized human rights into their daily activities.

7. Mr. LOFTIS (United States of America) said that, while torture was publicly condemned as antithetical to the most fundamental human rights, there were States members of the Commission which continued to practise it in order to stifle aspirations to freedom or to support dictatorship or despotism. Even when the methods used left no marks on the victim, torture was never really invisible, since it left its mark on those who engaged in it.

8. The United States unequivocally condemned torture and believed that all States should immediately ratify and implement the Convention against Torture. Work on the draft optional protocol to the Convention should be intensified. The Centre for Human Rights should, within existing resources, develop training programmes for the police and members of the judiciary. All States should do whatever was needed to prevent incommunicado detention. All places of detention should be open to inspection by independent medical and legal investigators and by international human rights treaty bodies. Governments should also be held accountable at all times for their acts. The work of the Special Rapporteur on Torture should be strengthened.

9. The United States had already donated $500,000 during the current year to the United Nations Voluntary Fund for Victims of Torture and intended to make further contributions in the near future. It hoped that other countries would follow its example, but it looked forward to the day when there would be no need for the Fund because the practice of torture would be ended. The fact that there had always been torture did not mean that it was justified. If some countries continued to practise it, it was the duty of the Commission to expose the perpetrators, condemn their actions and take practical steps to bring the practice to an end.

10. Mr. CONROY (Australia) said Australia strongly believed that, through its thematic mechanisms, the Commission had an effective means of responding to situations of human rights violations in the world community.

11. The report of the Working Group on Enforced or Involuntary Disappearances was particularly important, since every act of enforced disappearance was an offence against human dignity and caused immense suffering, not only to the victims but also to their families. Yet, as the Working Group had noted in its most recent report (E/CN.4/1996/38), the number of cases continued to increase and the practice of enforced disappearance was increasingly frequent, particularly in the context of internal armed conflict and ethnic strife. Australia was pleased to note, however, that more and more Governments were cooperating with the Working Group, and it urged all countries to follow that example. It supported the Working Group's recommendation that all Governments should recognize the contribution of non-governmental organizations (NGOs) to the fight against such disappearances, since those organizations served as the world community's conscience.

12. Australia was pleased that the work of the Working Group responsible for drafting a protocol to the Convention against Torture at its fourth session (E/CN.4/1996/28) had been conducted in a positive and constructive atmosphere and that some articles of the Protocol had been adopted at first reading. It regretted, however, that a number of fundamental provisions of the text remained in square brackets. It wondered whether the high cost associated with the proposed sub-committee would divert funds from other programmes of the Centre for Human Rights. It was also concerned by the potential for duplication of existing provisions of the Convention against Torture, for example, article 20, which permitted the Committee against Torture to visit places of detention with the agreement of the State party concerned. It believed that, if the Protocol was to have meaning, the powers of the Committee in that area should be extended.

13. As the Working Group on Arbitrary Detention had stated in its report (E/CN.4/1996/40), the main causes of arbitrary detention were the exercise of powers pertaining to states of emergency, a lack of clarity in the description of criminal acts and the establishment of special or emergency courts which did not act impartially or independently and failed to apply the rules of due process, thereby being unable to guarantee the right to a fair trial. Australia called on all States to support the Working Group's recommendations, including the recommendation that information requested by the Group should be delivered within the stipulated 90-day period; it also urged States to recognize the importance of initiatives aimed at strengthening the rule of law and ensuring the impartiality of the judiciary.

14. Australia welcomed the recommendations made in the Secretary-General's report on children and juveniles in detention (E/CN.4/1996/31) and called upon all States to take into account in their legislation, and to disseminate widely, the United Nations rules and guidelines concerning juvenile delinquents and juveniles deprived of their liberty. Australia acknowledged that it, too, needed to make progress in that area and welcomed any opportunity to improve regional and international cooperation designed further to protect the rights of children and juveniles in detention.

15. Australia believed that if all States complied with the recommendations made by the Special Rapporteur on Torture in his report (E/CN.4/1995/35 and Add.1), the incidences of torture would be radically reduced. It supported the increased focus within the United Nations system on the administration of juvenile justice, in particular the implementation of standards relating to juveniles deprived of their liberty. It attached great importance to the full cooperation of States with the thematic mechanisms of the Commission and believed that all States had an obligation to bring to justice those responsible for serious human rights violations.

16. Mr. HOLST (Denmark), focusing on the medical aspects of torture, said that treatment and rehabilitation were offered each year to tens of thousands of torture victims in more than 180 rehabilitation centres and programmes in all parts of the world. One third of those centres and programmes were located in countries of the European Union. Such was the case of the first centre of that kind, which had been opened 14 years previously in Copenhagen and, since then, had received victims from over 55 countries, all of which were Members of the United Nations and, in principle, bound by the Universal Declaration of Human Rights and other international human rights instruments forbidding torture. There were other such centres in North America and Australia and, increasingly, in Latin America, Asia, Africa, and Central and Eastern Europe, which allowed for a culturally better-adapted, and financially more cost-effective, provision of care to a larger number of victims in their own environment and their own language.

17. The development of such services did not reflect an increase in the incidence of torture, but rather a heightened awareness on the part of victims, who were now daring to come forward and request the treatment which they badly needed and definitely deserved. Such services also played an important indirect role in the reconciliation process in many young

democracies since, even when a society was unable to prosecute and punish the torturers, it could express its solidarity with the victims by offering them the necessary social and medical rehabilitation.

18. Experience had shown that such services were best provided by independent but officially-recognized institutions, which could offer complete confidentiality and which the victims felt they could trust. But it was essential that those centres should receive international funding. The United Nations Voluntary Fund for Victims of Torture, created by the Commission in 1981, had played an important role in that respect; however, lacking adequate funding, it now covered only 10 to 15 per cent of the estimated total needs. Funding was also provided in part by a special budget line, created in 1994 by the European Union, and by private foundations and technical assistance programmes. The remaining needs were, unfortunately, not covered in many cases, which sometimes led to the partial or total closing of centres and hampered the establishment of new centres in Africa, Asia, Central America and Central and Eastern Europe. His delegation therefore urged current and potential contributors to the United Nations Fund to hold consultations during the current session of the Commission in order to discuss ways to remedy the situation.

19. While the medical approach to torture and its consequences was primarily intended to provide the necessary care to victims, it also made for a better understanding of the circumstances and causes of torture, thereby making it possible to develop a more rational approach to early detection and prevention of the phenomenon by treating it as a public health problem, as had previously been done with tuberculosis. It was clear, however, that the prevention of torture could not be accomplished by the medical profession or the health-care system alone. It required the involvement of other professional groups, determined action by political and administrative authorities in Member States, including the adoption of educational and judicial measures, and continued political and financial support for the human rights machinery of the United Nations and, in particular, the Commission.

20. Mr. HAIDER (Pakistan) said that his country, in its desire to strengthen democracy, had received the Special Rapporteur on Torture from 23 February to 2 March 1996. The Commission's Special Rapporteur on the question of religious intolerance and delegates from Amnesty International had also been invited to Pakistan.

21. Torture was forbidden by the Pakistani Constitution of 1973 and, with the restoration of democracy, the Government was working to make that prohibition an operative reality. To that end, the Government of Benazir Bhutto was working closely with national and international NGOs. However, the prejudices and sectarianism which had been encouraged under the dictatorship had not completely disappeared and armed terrorist gangs had been pressing their political and ethnic demands for over 10 years in the urban areas of Sind.

22. The measures taken by the Pakistani Government to meet the double challenge of strengthening the rule of law while fighting against terrorism included the establishment of a Ministry of Human Rights, whose responsibilities included protecting citizens from any form of illegal detention. In cases of violations, the higher judiciary was authorized

to intervene. The provincial government of Sind had also set up a round-the-clock hotline for victims of torture or illegal detention. The Prime Minister had appointed a special committee to revise the prison manual and the Senate and National Assembly had already passed a law to abolish whipping. Police stations with all-women officers had been set up, the Penal Code had been revised to prevent overnight detention of women in police stations and ensure their interrogation only in the presence of their husband or close relatives, and the Senate had set up a special committee on human rights. All those measures were intended to ensure respect for the legal rights of everyone, even the worst criminals.

23. In the rare cases of abuse, the Government had taken stern action and more than 20 judicial inquiries had been instituted. However, the ethnic group which had levelled allegations of excesses and demanded judicial inquiries had later refused to participate in those inquiries. The aim of that group was not justice but vicious propaganda against Pakistan at the international level for the purpose of shifting attention from the atrocities committed in occupied Jammu and Kashmir. The Pakistani Government was nevertheless committed to promoting the fundamental rights of all segments of society and to establishing a liberal, moderate, tolerant and progressive society. It was confident that the international community would support it in that endeavour.

24. Mr. JOINET (Chairman-Rapporteur of the Working Group on Arbitrary Detention) said that since the drafting of his report (E/CN.4/1996/40 and Add.1), the Working Group had received information from Egypt, Ethiopia and Turkey. Furthermore, all the persons mentioned in connection with Brazil had been freed. He thanked everyone who had helped the Working Group to carry out its task and also those who, by their criticisms, had helped it to make progress.

25. Mr. ESPINOLA SALGADO (Brazil) said that his Government fully supported the principle of the interdependence of democracy, development and respect for human rights as proclaimed by the Vienna Declaration, which also stressed the importance of an independent judiciary. The perpetrators of gross human rights violations too often remained unpunished owing to a lack of democratic institutions or to a failure in the effective administration of justice. While national Governments had a pivotal role to play in the implementation of international human rights standards, the international community also had a key role, for example, by helping developing countries which lacked, not political will, but material and human resources. For that reason, Brazil planned to submit a draft resolution to provide increased technical and financial assistance from the international community in order to strengthen institutions concerned with the administration of justice in the spirit of the Vienna Declaration and Programme of Action. Cooperation with Governments was needed to help them comply with international standards, for example, through improved training of judges and police officers.

26. Brazil had learned by experience that even countries with democratic institutions needed to make constant progress in the field of civil rights. That belief had led the Chamber of Deputies to approve a bill transferring competence from military to civilian justice in cases of human rights violations by military policemen.

27. Brazil had also learned by experience that the practice of enforced or involuntary disappearances eroded the moral authority of the State. Until the preceding year, the deaths of disappeared political activists under the military regime had not been officially recognized. President Cardoso, himself a victim of political persecution under that regime, had recently promulgated a law recognizing the death of 136 missing activists and ensuring financial compensation for their families. The same law had created a commission to examine the remaining cases. While it was impossible to provide full compensation for the injuries caused by State actions or omissions, the adoption of a policy of reparation with regard to past events was a moral obligation in societies which had overcome authoritarianism.

28. Finally, his delegation expressed support for the work of the thematic rapporteurs on the issues coming under agenda item 8 and the activities of the working group on the drafting of an optional protocol to the Convention against Torture. In order to achieve universal accession, the future protocol should take due account, on the one hand, of the need for an independent inspection mechanism and, on the other hand, of the principle of cooperation with States parties.

29. Mr. ENNACEUR (Observer for Tunisia) said it was unfortunate that, despite the new spirit of dialogue, cooperation and objectivity which characterized the work of the Commission, some NGOs were making unfounded accusations against, or attacks on, certain countries. If the Commission wanted to put an end to the human rights violations perpetrated in some countries, it should also encourage progress and distinguish between violations which were the result of deliberate government policy, without regard for international principles, and those which were the result of human error or excessive zeal in implementing the laws. The former called for international cooperation with a view to bringing about substantial change, whereas the second required continued monitoring at the national and international levels and education at all levels, together with dialogue and international cooperation.

30. Such dialogue and cooperation had been a permanent feature of the Tunisian Government's policy since 1987. In order to give concrete expression to its concern for democracy and human rights, Tunisia had become a party to nearly all the international human rights instruments, which were directly applicable in its legal system. It had also established other mechanisms to strengthen legal institutions and guarantees while encouraging respect for, and promotion of, human rights. The Tunisian High Committee for Human Rights and Fundamental Freedoms was monitoring the situation and reporting all cases of abuse or excess, which were met with legal and disciplinary sanctions.

31. Since, as the United Nations High Commissioner for Human Rights had stressed, education was also a prerequisite for respect for human rights, Tunisia had introduced human rights education into the schools, higher educational institutions and universities. A national education commission had just been established under the aegis of the Minister of Education and was responsible for preparing periodic reports on progress in that area. That project, which was part of the United Nations Decade for Human Rights Education, was proof of Tunisia's intent to pursue and strengthen its cooperation with the relevant United Nations machinery.

32. Mr. WANI (Muslim World League) said that he was taken aback and distressed by the apathy of the Commission since torture, arbitrary detention and extrajudicial executions continued to claim hundreds of thousands of victims each year. Yet the representatives of the torturers cynically informed the Commission that the victims of their repression were the real criminals.

33. Jammu and Kashmir had become an immense prison in the hands of the Indian security forces, who had killed 50,000 people and had imprisoned and tortured over 100,000. One such victim was Jalil Andrabi, who had been assassinated for pleading the case of the Kashmiri people before the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Despite the evidence which human rights advocates had given at the risk of their lives, the situation in Jammu and Kashmir was becoming worse each year, yet the Commission was doing nothing about it: no fact-finding mission had been sent and no resolution had been adopted. It was time for action to take the place of political considerations. It was the Commission's duty to take measures against the Indian aggressor, who was violating human rights with complete impunity.

34. Mr. SALDAMANDO (International Indian Treaty Council) said that his organization, which had been working on behalf of indigenous peoples for over 20 years, once again called on the United States of America to stop pretending that there were no political prisoners in that country and to free Leonard Peltier, a political prisoner who had been convicted on the basis of completely fabricated evidence and whose request for parole had just been denied, in clear disregard for the principles of the Universal Declaration of Human Rights. He also drew the Commission's attention to the case of Dennis Kanahele, head of the nation of Hawaii, who was peacefully seeking restoration of the sovereignty of his people. Pending a new trial, he had been subjected to surveillance measures that were both unjustified and humiliating. He deserved fair treatment from the United States.

35. In Guatemala, in 1995, there had been 221 extrajudicial executions, 30 enforced disappearances and 105 arbitrary detentions, sometimes accompanied by torture; paradoxically, as the independent expert, Ms. Pinto, had reported (E/CN.4/1996/15), the Mayan people who formed the majority in Guatemala was a vulnerable group. The populations of whole villages had disappeared and been summarily executed. In Agua Fria, the bodies of 167 men, women and children had been discovered. In Xaman, Government forces had killed 11 people, including children, and wounded 20 others.

36. In Peru, the great majority of the 5,000 victims of enforced disappearances, extrajudicial executions and torture were indigenous people, primarily Quechuas.

37. The International Indian Treaty Council called on the Commission to extend the mandate of the Special Rapporteur on Guatemala.

38. Ms. BANO (World Muslim Congress) described the inferno in which the people of Kashmir lived. In that valley with over 1 million Indian soldiers (one for every six inhabitants), every family had been a victim of violence.

She herself had risked her life and that of her family to come and testify to the Commission. Disappearance, detention, assassination and torture were all used to silence those who defended the rights of the Kashmiri people. Jalil Andrabi's crusade for human rights had cost him his life. Twenty-two members of the Kashmiri resistance had been burnt alive while in custody. Women, who were in the vanguard of the struggle for justice and dignity, were not spared: 20 of them, some barely in their teens, had been raped by "brave" Indian soldiers in the tiny village of Dadsara.

39. The capital, Srinagar, was like a concentration camp where everyone led a life of humiliation and fear of mindless violence. That well-documented situation was reported year after year to the human rights bodies, yet those responsible remained unpunished. It was time for the international mechanisms set up to prosecute criminals to come into play in Kashmir.

40. Mr. KHAN (World Peace Council) expressed concern at the observation of the Working Group on Enforced or Involuntary Disappearances that only a few States had taken steps to incorporate in their national legislation the principles of the Vienna Declaration, adopted at the World Conference on Human Rights, especially in regard to the characterization of acts of enforced disappearance as offences under criminal law, and as a continuing offence, or the prohibition of persons who committed that offence from benefiting from any special amnesty law or similar measures (E/CN.4/Sub.2/1995/WG.1/CRP.1). While it was essential to remedy that situation, it must not be forgotten that in some countries, particularly developing countries, the legal system itself was responsible for enforced disappearances.

41. While public opinion was the most effective weapon in combating such practices, that weapon could be two-edged. In countries which were the victims of terrorism, often financed from abroad, public opinion was tempted to ask the State to meet violence with violence. It was therefore important that the Commission should not only encourage States to adopt appropriate measures that were effective in combating enforced disappearances, but also sensitize the public to the long-term repercussions of enforced disappearances and deaths in custody. Those efforts would be futile, however, unless they were combined with a determined effort on the part of the international community to stamp out terrorism and, in particular, to censure those countries which, like Pakistan, were havens for terrorists.

42. No question relating to human rights could be understood in isolation. In carrying out its mandate under paragraph 20 of the Commission's resolution 1995/38, the Working Group should, therefore, also consider the issue of violations arising from non-governmental actions and public apathy.

43. Mr. FAI (International Islamic Federation of Student Organizations) expressed regret that, a year after his previous statement to the Commission, the situation in Kashmir had not changed. His organization had invited Jalil Andrabi to speak on agenda item 8 at the current session. However, Mr. Andrabi had been arrested by the Indian paramilitary forces and had been found dead and mutilated. Mr. Andrabi had told the Sub-Commission in 1995 that he was living in fear. He (Mr. Fai) said that his own cousin, Shabir Siddiqui, a scholar rather than a terrorist, as India claimed, had been burnt alive in Srinagar.

44. As stated in the most recent human rights report issued by the United States State Department, the people of Kashmir's only crime was asking for the implementation of United Nations resolutions and for respect for internationally recognized human rights. Nearly half a century after the beginning of the Indian occupation, it was high time for the international community to intercede on Kashmir's behalf. It was a more densely populated area than other trouble spots in the world, and its people were suffering no less than those of Haiti. The nuclear confrontation there was no less threatening than in Korea, the rapes committed there no less humiliating than those in Bosnia and the cases of torture and imprisonment no less frequent than in Burma. Nevertheless, the Kashmiri people continued to place great hopes in the United Nations.

45. Mr. CUNNIAH (International Confederation of Free Trade Unions) noted with concern that the Government of China had not yet invited the Special Rapporteur on Torture to visit that country, where trade-unionists were among those imprisoned and mistreated, a fact which had led the Confederation to protest to the Chinese authorities on several occasions. Nine trade-unionists were still imprisoned and the state of health of one of them, Zhou Guoquiang, was a cause for concern.

46. With regard to the Sudan, the information received by the Special Rapporteur corroborated that received by the Confederation concerning the torture and death in detention of some trade-unionists, for example, Abdel Moniem Rahama. The Confederation urged the Special Rapporteur on Torture and the Working Group on Arbitrary Detention to visit the Sudan at the earliest opportunity.

47. The Confederation shared the Special Rapporteur's belief that the Commission should appoint a special rapporteur for Colombia. Such a measure was warranted by the seriousness of the human rights situation in that country, where almost 30,000 people had died as a result of political violence and extrajudicial executions.

48. In Mr. Abid Hussain's report on his mission to the Republic of Korea (E/CN.4/1996/39/Add.1), it was stated that the Committee on Freedom of Association of the International Labour Organization had denounced the restrictions on freedom of assembly and association imposed by the Government of that country. As a result of those restrictions, some 40 Korean trade-unionists were still in detention under charges of having breached the labour laws, which in fact were not in conformity with international labour standards. The Confederation urged the Commission to endorse the recommendations of the Special Rapporteur contained in paragraph 46 of his report, in particular those calling for the unconditional release of all prisoners of conscience and for amendments to the labour laws.

49. The CHAIRMAN invited those delegations wishing to exercise the right of reply to take the floor.

50. Mr. MUÑOZ-LEDO (Mexico) said that, in its statement on agenda item 8 at the 25th meeting, the Latin American Federation of Associations of Relatives of Disappeared Detainees (FEDEFAM) had stated that laws authorizing arbitrary detention and similar measures had been promulgated in Mexico. The laws of

that country were adopted by a democratically elected Congress, which had never promulgated laws incompatible with respect for human rights. In that regard, he referred the Federation to the eighth annual report of the Special Rapporteur on human rights and states of emergency.

51. FEDEFAM had also stated that, in 1995, there had been a resurgence of disappearances in Mexico. On that point, he referred that organization to the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1996/38), which stated that, while there had, indeed, been 23 new allegations of disappearances in 1995, 28 cases of alleged disappearance had been resolved. In other words, the number of disappearances had decreased rather than increased.

52. Mr. QUAYES (Bangladesh) formally denied the allegations made against his country, which suggested that the pronouncement of fatwas and other acts of intimidation and even murder, particularly in the case of writers and journalists, were common there. He stressed that arbitrary pronouncements such as fatwas, threats and other acts of intimidation against any individual were regarding as contrary to Islam and incompatible with the Constitution of Bangladesh. Moreover, the United States State Department had noted in its Country Reports on Human Rights Practices that the judiciary in Bangladesh displayed a high degree of independence and often ruled against the Government in criminal, civil and even political cases. While there had, in fact, been cases in which unlawful fatwas had been pronounced, they should be viewed as isolated incidents which had, moreover, been officially denounced. For example, those who had pronounced a fatwa against a remarried woman, who had committed suicide because of the pronouncement, had been found guilty of incitement to suicide and sentenced to seven years' rigorous imprisonment by a court. Those facts had been established by Amnesty International.

53. It was essential for NGOs, whose usefulness could not be disputed, to be able to distinguish between systematic human rights violations and isolated criminal acts dealt with by the criminal justice system.

54. Ms. JARF (Observer for the Syrian Arab Republic) said that the International Federation of Human Rights had implicated her country under agenda item 8, illustrating its remarks by referring to a certain committee for the protection of human rights in Syria in order to condemn the situation in that country. The members of the committee in question were, in fact, terrorists who had been convicted of crimes against national security. An investigation had demonstrated that they were receiving money from abroad, carrying out clandestine activities and disseminating false information for the purpose of encouraging armed resistance. They had actually acknowledged those facts without coercion at a public trial attended by representatives of NGOs. The sentences handed down had varied from person to person and some of the accused had even been declared innocent. It was unfortunate that systematic criticism of certain third world countries was a policy of the International Federation of Human Rights. It would be interesting to know who was financing and running that organization.

55. Mr. TANDAR (Observer for Afghanistan) said that the accusation against his country made by the Asian Buddhist Conference for Peace was a very serious one. The Conference had stated that Afghanistan was mentioned in the report

on the question submitted to the Commission (E/CN.4/1996/35) as a country that practised torture. In fact, Afghanistan was not mentioned anywhere in the report, which led his delegation to conclude that the NGO concerned had deliberately taken the political decision to denigrate Afghanistan and its Government. If they wished to be credible, NGOs must behave responsibly.

56. Mr. SUN Mingshan (China) said that, in its statement, the International League for Human Rights had said that torture was commonly practised in China and that the Chinese judicial system was not an independent one. Those accusations were not based on any specific fact. Moreover, the Chinese Constitution officially prohibited torture. In China, a prisoner who was mistreated received compensation and those responsible were severely punished. The organization in question had given as an example the case of Hu Jian. That militant had been imprisoned for his subversive activities and, since he was mentally disturbed, had been transferred to a psychiatric hospital where his care had been fully provided by the Chinese Government. Moreover, his mother had expressed her thanks to the Chinese authorities. Several other NGOs, including the International Confederation of Free Trade Unions, had denigrated the Chinese legal system, thereby violating the principle of non-interference. Such an attitude was contrary to the spirit of cooperation which should prevail in the Commission.

The meeting rose at 5.15 p.m.

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COMMISSION ON HUMAN RIGHTS

Fifty-second session

SUMMARY RECORD OF THE 28th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 9 April 1996, at 10 a.m.

Chairman: Mr. VERGNE SABOIA (Brazil)

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(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

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The meeting was called to order at 10.15 a.m.

FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS (agenda item 21) (E/CN.4/1996/103)

1. Mr. AYALA-LASSO (United Nations High Commissioner for Human Rights) said that human rights were the link in the chain between peace and development. Significant progress had been made in establishing international human rights standards and the time had come to make those rights a reality for people everywhere. To that end, it was incumbent on the United Nations system to provide effective assistance to Member States in their efforts to ratify international human rights instruments, make constitutional and legislative reforms, build national institutions, implement international human rights standards and introduce appropriate human rights education and training. To do so, the United Nations must harness the energy and coordinate the efforts of the wider human rights community made up of Governments, intergovernmental organizations, regional organizations, experts, academic institutions, non-governmental organizations (NGOs), the media and individuals.

2. The Commission on Human Rights could work more effectively if it revised its procedures. It should consider the possibility of making resolutions more result-oriented, so that progress could be measured and built upon from one year to the next. In particular, operative paragraphs referring to specific situations might clarify questions such as: the human rights problems that had been identified, the remedial actions suggested or taken, the durable solutions considered and the resources allocated for those actions. Condemnation of human rights violations should not be an end in itself but part of the process of identifying lasting solutions to serious problems. Such solutions might require action by the United Nations, and the Organization or its Member States must provide the corresponding financial resources. The recent resolution on Burundi was an example that the Commission might bear in mind. More generally, the Commission must base its work on the spirit of the Vienna Declaration and Programme of Action.

3. In considering possible reforms in its working methods, the Commission might wish to begin with his own report, (E/CN.4/1996/103) and the report on the follow-up to the Vienna Declaration and Programme of Action. Those reports would enable it to take stock of the progress made at the national and regional levels, with emphasis on an action-oriented approach and the realization of rights.

4. In his continuous process of dialogue with Governments, he endeavoured to emphasize the obligation of States to promote and protect all human rights and persuasion had proved to be a useful tool. He was also monitoring the progress made in implementing the recommendations of the treaty bodies and other Commission mechanisms, whose excellent work he commended. He also consulted the NGOs, both international and national.

5. While most standard-setting work had already been completed, progress was being made on the two optional protocols to the Convention on the Rights of the Child and in connection with the declaration on human rights defenders.

6. Adequate inter-agency cooperation and coordination was essential to ensuring a fully integrated approach to human rights. References in resolutions of United Nations bodies to action by his Office, particularly with respect to coordination within the United Nations system, should be encouraged, since they strengthened his authority.

7. The celebration in 1998 of the fiftieth anniversary of the Universal Declaration of Human Rights, coinciding with the five-year review of the Vienna Declaration and Programme of Action, would provide an important opportunity for broadening support for human rights and engaging the larger human rights community in those efforts.

8. He was endeavouring to increase support for the mechanisms set up by the Commission and, in particular, to enhance the identities of the special rapporteurs. Earlier in the year, he had convened the first coordination meeting for special rapporteurs working in the Great Lakes Region of Africa, resulting in a pledge to develop an integrated approach to the problems of Burundi, Rwanda and Zaire.

9. The treaty bodies played an important role in early-warning and prevention activities. The chairpersons of the treaty bodies had met the Secretary-General for the first time in 1995 and would do so again in 1996. The strategy that he had himself outlined in relation to the work of the Committee on the Rights of the Child could be used as a model for the other treaty bodies. He was also endeavouring to coordinate United Nations human rights efforts by harmonizing three main aspects: the standards set by human rights instruments, the priorities established by experts and the actions of financial institutions and development agencies. Close cooperation among the relevant United Nations agencies and programmes could, in particular, help to bring the international community closer to meeting the provisions of the International Covenant on Economic, Social and Cultural Rights.

10. He welcomed the increased interest of the development and financial institutions in human rights programmes, including social programmes, programmes to promote the rule of law and programmes to build civil infrastructures and encourage popular participation. Such interest demonstrated that human rights were considered to be the foundation for sustainable economic and social development.

11. He was endeavouring to strengthen the advisory services and technical cooperation programmes. He fully endorsed programmes to build national capacities for the promotion and protection of human rights, which should be of sufficient duration to ensure their permanency. United Nations field staff could greatly facilitate the success of such programmes, as in the cases of Malawi and Cambodia.

12. A Plan of Action had been elaborated to stimulate and support local and national activities under the United Nations Decade for Human Rights Education. Governments should prepare national plans of action and set up national committees for human rights education with representation from the public and private sectors.

13. In its resolution 48/141, the General Assembly had given him a mandate to promote and protect the realization of all human rights, including the right to development. He had endeavoured to give practical and tangible substance to that right, as reflected in his decision to assign one of the branches of the Centre for Human Rights to oversee activities in that area, a decision that had been endorsed by the General Assembly. A meeting of experts would be held in mid-1996 to examine ways and means of effectively implementing the right to development, and he would report on those efforts to the Commission at its next session.

14. He had played an active role in efforts to integrate the gender dimension into human rights activities and had submitted comments on the draft report of the Fourth World Conference on Women to ensure that human rights standards were respected in the final document. Various activities would be undertaken, in close cooperation with the Secretariat and the agencies working for the advancement of women, to implement the relevant provisions of the Vienna Declaration and Programme of Action and the Beijing Declaration and Platform of Action.

15. The outcome of his official visit to Indonesia and East Timor was contained in a separate report. Discussions with the Government of Indonesia were being held with regard to a comprehensive programme of cooperation in the field of human rights and the establishment of a United Nations presence in Jakarta. He hoped that he would soon be able to announce the signing of a memorandum of understanding with that Government.

16. Following the visit in May 1995 to the Russian Federation, including the Chechen Republic and Ingushetia, by a representative of his Office, he was working with the Russian Government to promote and protect human rights in the region and to foster confidence-building measures based on respect for human rights. His representative had paid a second visit to the Russian Federation at the end of March 1996, during which he had met high-level representatives of the Government and the Constitutional Court, whose openness and cooperative spirit were much appreciated. Considerable progress had been made with regard to practical cooperation. He welcomed the programme for the settlement of the crisis in the Chechen Republic recently announced by President Yeltsin which, if fully implemented, could represent a breakthrough, and was prepared to provide all possible support to the process.

17. He had visited Nepal in February 1996 to open the fourth Asia/Pacific Workshop on Regional Human Rights Arrangements, organized by his Katmandu Office. The workshop, attended by representatives of 40 Governments, had significantly advanced the debate on the need for and the modalities of human rights efforts in the region and subregion.

18. The main purposes of his second visit to Cambodia had been to strengthen the presence of the Cambodian office of the Centre for Human Rights, and to sign a Memorandum of Understanding between the Government of Cambodia and the Centre. Both objectives had been achieved.

19. Since taking office, he had been endeavouring to integrate the promotion and protection of human rights with technical assistance programmes in an effort to rebuild and strengthen civil society in Rwanda, Burundi and the

former Yugoslavia. He had also been making efforts to comply with the Commission's request that an office be opened in Zaire and had submitted the text of the relevant agreement to the Zairian authorities.

20. The field operation in Rwanda, the first and largest of such operations, had been one of the most difficult, since it involved not only inquiries into human rights but also re-establishing a climate of confidence which would encourage the return of refugees. The success of the operation was to be measured by the support it received from the Government of Rwanda, the international community and NGOs. The Government of Rwanda had recently requested an increase in the number of field officers.

21. The Dayton Peace Agreement was a sign of hope after the tragic events in Bosnia and Herzegovina and Croatia, including serious human rights violations. He would continue to provide support to the relevant Special Rapporteur and the Expert on the special process dealing with missing persons in the former Yugoslavia; provide training for international civil personnel; and provide specialized human rights experts associated with the High Representative. Several training programmes had already taken place.

22. Since his appointment, he had been paying special attention to the human rights situation in Burundi and had opened an office in Bujumbura, which mainly provided technical assistance. The Commission's consensus resolution on Burundi was very welcome and he would be dispatching human rights observers to that country to foster a climate of peace, confidence and tolerance, the first five of whom were already being deployed.

23. Field operations in Rwanda, Burundi and the former Yugoslavia depended on voluntary contributions. Financial uncertainty had delayed the planning and setting up of field operations and had damaged their efficiency. Efforts to fund field operations from assessed contributions had not been successful. If the United Nations deemed such operations to be essential, however, the necessary resources must be provided. Significant contributions had been made by the European Commission to the human rights field operations in Rwanda and Burundi and, indeed, European Member States had borne the major financial burden of those operations. He wished to acknowledge the important role played by those States in United Nations human rights activities and hoped others would follow suit.

24. The picture of human rights violations established by the various United Nations mechanisms continued to show the same disturbing patterns and trends. Impunity paralleled those violations, in many parts of the world and those responsible for executions, torture, arbitrary detention and disappearances continued to go free. The provisions of universally accepted human rights instruments were often not respected.

25. While they represented positive steps in the combat against impunity, the international criminal tribunals for the former Yugoslavia and Rwanda were a complement to rather than a substitute for domestic justice. The international community must deliver a clear message that impunity could not be tolerated. A country lacking a system which ensured social justice and human dignity would inevitably disintegrate in internal conflict.

26. At least 1 person out of every 50 in the world had been displaced because of war, lack of guarantees of fundamental rights, the destruction of the natural environment or collapse of the economic and social infrastructure. Early warning was thus an important tool for alerting the international community to potential human rights crises so that appropriate steps could be taken. The number of early-warning initiatives reflected the importance of the issue. Violations of human rights were a cause of conflicts but they were also the result of conflicts. Early warning should therefore be part of prevention activities. That priority matter would be further developed by the Centre for Human Rights.

27. He had begun the process of restructuring the Centre. Following an analysis by its own staff and a review of its current organization and practices, with assistance from a consultancy firm, a Change Plan had been drawn up providing for reorganization projects in five areas: managing finances, managing human resources, managing information, managing relations with other partners, and restructuring the Centre. The Change Plan had been endorsed by the Secretary-General and his senior management. Based on a tripartite approach, in which his Office, the United Nations administration and the consultancy firm would each be making a contribution, the phased implementation of the five projects was currently under way.

28. The new administrative structure of the Centre would give priority to the right to development and economic, social and cultural rights and would be based on the principle of unity between the High Commissioner and the Centre under his authority. Specific functions would be assigned to the Assistant Secretary-General for Human Rights, who would also act as his deputy. Three other organizational units would help implement the substantive programme.

29. The restructuring was the beginning of a process of reform aimed at increasing the effectiveness of United Nations action in the field of human rights while ensuring transparency of methods and high quality of services. The Centre must become a model of excellence and a positive example for other parts of the United Nations system.

30. He would be seeking the views of the treaty bodies, special representatives, working groups, and special rapporteurs with regard to ways to rationalize, adapt and strengthen the United Nations human rights machinery.

31. The resources approved in the regular budget for 1996-1997 represented the minimum needed to carry out the mandated activities. In February 1996, budgetary resources had been cut by US$ 2.9 million in post and non-post items owing to the Organization's financial crisis, thus reducing the approved budget by more than 6 per cent. While every effort would be made to minimize the possible consequences of the cut, the medium- and long-term capability of human rights programmes depended on an adequate and reliable share of the regular budget resources and voluntary contributions from Governments and others. The ever-increasing demands on his Office for assistance in such areas as confidence-building, technical cooperation, education, and observation and monitoring could not be satisfied by regular-budget funding alone.

32. It was thus incumbent on States, collectively or individually, to make a greater financial contribution. The challenges of human rights promotion and protection necessitated commensurate political will and financial support. Human rights funding from the regular budget was currently little more than 1.5 per cent of the total budget. Extrabudgetary resources provided funds for specific activities.

33. Extrabudgetary funds for the field operation in Rwanda amounted to US$ 8.7 million in cash and US$ 7.7 million in kind. However, that amount had been provided gradually, making it difficult to plan and manage the operation. The human rights programme should be able to rely on predictable sources of funding from voluntary sources. To meet current requirements, an annual amount of US$ 25 million was needed and he appealed to Member States to make generous contributions.

34. There was no need to establish a new fund. A Fund to support the activities of the Centre already existed and was used to finance certain field activities. Within that Fund, specific sub-accounts for each field activity had been created to receive earmarked contributions while a sub-account for unspecified contributions would also be set up. To ensure transparency in the administration of the Fund, he planned to establish an informal advisory board made up of the coordinators of the regional groups in Geneva. The Fund had the potential to become a revolving fund to deal with emergency human rights situations of any kind.

35. He hoped to forge a new alliance, based on a spirit of cooperation and dialogue, with all the actors involved in the promotion and protection of human rights. His efforts would remain focused on making human rights standards more operative and in making the Secretariat more responsive to that goal. More dialogue between the various parts of the system, both inside and outside the United Nations family, was needed, while adequate resources and greater coordination were essential.

36. Guided by the spirit of the Vienna Declaration and Programme of Action, he counted on the support of Member States, international organizations, United Nations agencies, national institutions and NGOs. The annual session of the Commission on Human Rights should be the culmination of the integrated and coordinated efforts of the partners inside and outside the United Nations system.

37. Mr. H.K. SINGH (India), noting that the Vienna Declaration and Programme of Action had called, inter alia, for integrated approaches to human rights promotion and protection, asked the High Commissioner how the Programme of Action was taken into account in restructuring the Centre. It would be interesting to learn also how he proposed to respond to Member States' requests for the setting up of a new branch in the Centre whose primary responsibilities would include the promotion of the right to development as well as for programmatic follow-up through the Centre's Plan of Action for the 1996-1997 Biennium.

38. Referring to Commission resolution 1995/43 and noting the lack of reference in the High Commissioner's Report to the problem of terrorism, he asked the High Commissioner to outline his approach to that issue and to explain how he and the Centre proposed to tackle the problem.

39. Mr. AYALA-LASSO (United Nations High Commissioner for Human Rights) said that, in accordance with the Vienna Declaration and Programme of Action, he had been emphasizing that all human rights should be approached in the same balanced way without giving preference to some aspects over others. The restructuring of the Centre was taking account of that philosophical approach. The different branches of the Centre, as previously established, had not permitted a unified approach to the promotion and protection of human rights, but three areas had been identified where substantive work would be carried out. They concerned the analysis of information and research in order to provide substantive inputs to other units of the Centre, the implementation of actions to translate human rights policies into reality and the servicing of the different mechanisms created by the human rights programmes. Those three units would be mutually reinforcing, in compliance with the unified mandate emanating from the Vienna Declaration and Programme of Action.

40. In asking for the establishment of a new branch, the General Assembly had not, he thought, wanted to be involved in management activities or administrative decisions. What was important was that the right to development should be one of the key issues of the Centre's work.

41. He shared the deep concern of all delegations about terrorism. Human rights violations must be addressed no matter who the perpetrator was. Terrorism had been condemned by the institutions of the United Nations system and the Centre was guided in its work by the decisions taken by those institutions.

42. Mr. McALISTER (Canada) said that the question and answer session immediately following the presentation of the High Commissioner's report should be continued, as it permitted constructive dialogue between the High Commissioner and the members of the Commission.

43. His delegation would continue to be fully supportive of the High Commissioner, particularly with respect to efforts to provide him and the Centre with adequate resources from the regular budget. His delegation was seriously concerned about the current situation in which key mechanisms, such as the special rapporteurs and the treaty bodies, did not have the support they required to fulfil their potential.

44. His delegation would appreciate additional information on the progress made in establishing an ongoing dialogue with other United Nations bodies represented on the Administrative Committee on Coordination (ACC) as well as efforts to establish a framework of cooperation with the bodies involved in conflict prevention and conflict resolution.

45. Mr. AYALA-LASSO (United Nations High Commissioner for Human Rights) said that, in 1994, he had secured the regular inclusion in the ACC agenda of an item on human rights. That represented considerable progress, because it permitted the Centre's involvement in all the working groups and mechanisms

established by ACC for the analysis of the various aspects of its agenda, especially the working groups responsible for monitoring the implementation of decisions adopted by the major United Nations conferences. He hoped that a working group on the recommendations of the Vienna Conference would be established and that the Centre would be responsible for coordinating its work. The Centre also had contacts with individual United Nations agencies and was currently considering improvements to its memorandums of understanding with those agencies in order to ensure cooperation within the United Nations system.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(d) QUESTION OF A DRAFT PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 8) (continued) (E/CN.4/1996/5-E/CN.4/Sub.2/1995/36, E/CN.4/1996/28 and Corr.1, 29 and Add.1-3, 30, 31 and Add.1, 32 and Add.1, 33 and Add.1, 34, 35 and Add.1 and Corr.1 and Add.2, 36, 37, 38 and Corr.1, 39 and Add.1 and Add.2, 40 and Add.1, 41, 121-124, 133 and 143, E/CN.4/1996/NGO/10, 24, 25, 26, 36, 46, 55 and 61; E/CN.4/Sub.2/1995/20 and Corr.1 and Add.1 and 30 and Add.1; E/CN.4/1995/100; A/50/512)

46. Mr. HUSSAIN (Special Rapporteur on freedom of opinion and expression) said that freedom of opinion and expression was the mother of all freedoms. Wherever that right was violated, other gross violations of human rights tended to occur in parallel. Governments of all political persuasions violated that right and muzzled the media in many ways.

47. His visit to the Republic of Korea (E/CN.4/1996/39/Add.1) had resulted in the adoption by that country's Government of a number of concrete measures designed to promote and protect the right to freedom of opinion and expression as well as in the release of a number of detainees. During his visit to the Islamic Republic of Iran (E/CN.4/1996/39/Add.2), he had found a greater willingness on the part of that country's Government to accommodate considerations on the promotion and protection of the right to freedom of opinion and expression and to encourage a dialogue on those matters. Unfortunately, he had been unable to visit Turkey as planned. He was also looking forward to establishing close cooperation in the near future with the Government of the Democratic People's Republic of Korea as well as with a number of other Governments with whom he was currently in close touch.

48. He had received cooperation not only from Governments, but also from NGOs, which had a vital role to play in creating a public opinion supportive of human rights and he planned to continue and intensify joint activities with them.

49. The state of affairs in relation to the protection of the right to freedom of opinion and expression was a grave one. He had not yet received replies to letters sent in 1994 to the Governments of 32 of the 40 countries mentioned in his earlier report. He could not fulfil his mandate effectively without proper and timely response to the grievances referred to Governments.

50. Over the previous decade, 456 journalists had been killed in the line of duty in more than 60 countries throughout the world. They had been victims of political persecution, terrorism and organized crime. That was a horrifying figure which gave serious cause for concern.

51. Differences of religion, ideology, ethnicity and culture were being invoked to suppress thoughts, opinions and beliefs contrary to those held by the Government or proclaimed by the State. Global civilization required societies that were multicultural and pluralist in nature and everyone should have both freedom for ethnicity and freedom from ethnicity. The same applied to culture, religion and ideology.

52. The upsurge of hate speech gave cause for continued concern. An early-warning system should be established to alert everyone to the dangers of hate speech and prevent it in a manner consistent with the protection of the right to freedom of opinion and expression. Press professionals and press ombudsmen could lay down codes of professional ethics and render public opinion more sensitive to that grave problem. Governments could contribute by respecting a free press and facilitating public debate on the issue, bearing in mind that hatred festered in precisely those places where censorship and thought control prevailed. Censorship was not the answer to media problems of violence, sex and pornography. Public consciousness could be raised through a combination of popular initiatives and pressure groups, education and the judiciary.

53. All Governments felt the need to protect the genuine national security interests of the societies they governed while protecting the right to freedom of opinion and expression and a just balance had to be struck between freedom and authority. To assist all Governments in striking such a balance, he had annexed to his report the Johannesburg Principles on National Security, Freedom of Expression and Access to Information.

54. Mr. Chang-Il PARK (Republic of Korea), having mentioned that his Government had recently acceded to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment because of the high priority it accorded to the promotion of democracy and human rights, said that the findings and recommendations of the Special Rapporteur on the right to freedom of opinion and expression in the report on his mission to the Republic of Korea (E/CN.4/1996/39/Add.1), would be an important source of guidance in efforts to protect and promote human rights and would be reflected in the country's national policies and legislative measures as appropriate.

55. As for some of the issues mentioned by the Special Rapporteur and by certain NGOs, he pointed out that his Government maintained the National Security Law (NSL) in order to safeguard security and the country's system of liberal democracy which had been under constant threat since the end of the Korean war. It had undertaken a revision of that Law in recent years and had amended some of its more controversial elements. Future application of the NSL would be strictly limited to safeguarding national security, with due regard for fundamental human rights, and would not affect academic research, or the expression of ideologies opposed to the liberal democratic system.

56. The so-called long-term prisoners could not be considered prisoners of war as defined by the Geneva Convention relative to the Treatment of Prisoners of War, since they were guerrilla fighters guilty of crimes against humanity. Such prisoners were treated in the same way as other ordinary prisoners. Many prisoners were granted early release on the basis of compliance with the stipulations of the Penal Institution Act. Any remaining prisoners, including long-term prisoners, were still imprisoned because they had failed to meet the requirements for early release. Since 1993, his Government had granted amnesty to prisoners on five occasions and many long-term prisoners had benefited therefrom.

57. Concerning labour law reform, his Government was making continuous efforts to build a consensus through its dialogue with both trade unions and management on an overall package of amendments to the current laws. It hoped that agreement would be reached in the near future.

58. Mr. van WULFFTEN PALTHE (Netherlands), having reminded the Commission that his delegation had proposed that country-specific findings be compiled from the various special rapporteurs and grouped into country dossiers for easy reference, said that the Special Rapporteur on the independence of judges and lawyers was to be commended for the objective way in which he had dealt with the issue of "faceless" judges in Colombia and Peru. It was to be hoped that the Governments of both countries would enable the Special Rapporteur to carry out his planned investigative missions there.

59. The Governments of Peru, Pakistan and Nigeria had regrettably failed to heed requests by the Special Rapporteur for joint missions with other special rapporteurs and mechanisms. The human rights situation in Nigeria, in particular, seemed to warrant such a joint mission and his delegation urged the Government of that country to ensure that the Civil Disturbances Tribunal either operated on the basis of due process or was abolished.

60. The Special Rapporteur on the question of torture had investigated many cases in many States, some of which invoked their struggle with long-standing separatist movements or guerrilla warfare as circumstances that eroded human rights standards. That problem was largely a matter of political will. Torture was politically counterproductive and was likely to affect the general state of the country. All States with serious incidences of torture should recognize their problems and cooperate fully with the Special Rapporteur by providing him with all the detailed information and access he requested.

61. Though the situation in the territory of the former Yugoslavia was finally improving, the report on missing persons in that territory (E/CN.4/1996/36) revealed the enormous task that lay ahead. The excavation of mass graves must be carried out in a professional, impartial and well-coordinated manner, proof of war crimes being preserved for use by the International Criminal Tribunal. The report proposed the establishment of a high-level multilateral commission on missing persons to coordinate the excavation of mass graves, and his Government was ready to consider contributing to that effort.

62. Mr. H.K. SINGH (India) said that no society was entirely free from human rights violations, and India made no such claim. His Government had, in recent years, engaged civil society in open discussions designed to improve the legal system and institutional mechanisms. As a result, action had been taken to introduce effective safeguards against arbitrary behaviour and to strengthen the rule of law and respect for human dignity. The Supreme Court had ruled that the judiciary could initiate action based on petitions submitted by NGOs or individuals and could take cognizance of relevant media reports.

63. India had found that normal criminal laws were inadequate to deal with the extraordinary circumstances of terrorism. The laws that provided for preventive detention were not arbitrary but had been duly enacted by Parliament and incorporated safeguards to protect individual rights. There appeared to be a tendency to overlook human rights violations by terrorists, but there were plenty of avenues other than terrorism for expressing dissent, including the ballot box. Most Indian citizens preferred the ballot to the bullet, and that was an aspiration that his Government would meet. The impact of terrorism on human rights, particularly in democratic societies, should be paid greater attention by the Commission, which should ask itself some searching questions on how to deal with human rights violations by non-State actors.

64. His Government had invariably cooperated with the various Commission mechanisms, endeavouring to ensure that individual cases were investigated expeditiously and detailed replies given. Though well aware that there were gross violations of human rights in neighbouring countries, it believed that it was for the States concerned to face those problems and that the abuse of others, efforts to divert blame or outright interference in internal affairs were not conducive to the promotion and protection of human rights.

65. Mr. CHAVEZ (Peru) said that, six years previously, his country had instituted far-reaching changes to surmount the most serious crisis in its history, a crisis that had undermined respect for human rights. With great difficulty, Peru had regained control of its economy and repelled terrorism. The foundations had thus been laid for the full enjoyment of all human rights.

66. His Government had received a number of visits from the Commission's mechanisms and was prepared to continue its full cooperation with them. It regretted, however, that the report of the Special Rapporteur on the question of torture (E/CN.4/1996/35) did not highlight the steep reduction in recent years in the number of alleged cases of torture but instead gave the impression that the number was even greater than those reported.

67. The institution of "faceless judges" had not originated in his country; it had been adopted because of the results it had yielded in other countries confronted with similar problems of terrorism and intimidation of judges. It was ironic that a legal instrument for the protection of judges, which might have prevented many deaths if it had been adopted earlier, should meet with so much criticism.

68. Mr. TIBARUHA (Uganda) said that his country had experienced massive and systematic violations of human rights in the 1970s, but that had ended in 1986 with the accession to power of a new President. Since then, his authorities had demonstrated their commitment to human rights in a number of ways. Uganda had ratified almost all the major human rights instruments. The new Constitution promulgated in October 1995 expressly prohibited the detention of any person for more than 48 hours without formal charges and outlawed the practice of torture under any circumstances.

69. To ensure that words were matched by deeds, his Government had put in place constitutional, legal and administrative mechanisms to protect the human rights of all detainees. The Constitution provided that all persons complaining of human rights violations had access to judicial institutions responsible for human rights protection and the Government had established three institutions to monitor the observance of the human rights of inmates in detention areas.

70. Mr. POERNOMO (Indonesia) said that those in charge of United Nations special procedures for human rights monitoring were vulnerable to double standards, while their mandates were susceptible to politicization. The recommendations offered were sometimes unrealistic, prejudicial to the targeted States and actually unfeasible. The Commission must rationalize its procedural and institutional arrangements or develop procedures that would be really effective.

71. The Working Group on Arbitrary Detention had identified a number of cases of arbitrary detention in Indonesia. His Government was not in a position to take any remedial steps, since the cases in question were subject to independent legal investigation, and intervention would violate constitutional and other legislation on the independence of the judiciary. In fact, of the four Indonesian citizens that the Working Group considered had been detained arbitrarily, one had been acquitted by the Supreme Court, on appeal, and two others had been released after serving the sentences duly imposed upon them after conviction by a court of law.

72. The Governments of Cuba and Indonesia had been singled out as having refused to invite the Working Group to visit their countries. That practice contradicted the principles of non-selectivity and impartiality and would ultimately undermine the Group's credibility. The Group's request to visit Indonesia to investigate the case of Xanana Gusmao was not warranted, as the individual in question had already been duly tried, and sentenced.

73. Mr. NDIAYE (Observer for Senegal) said that, over the past two years, his Government had instituted measures to integrate all the main provisions of international human rights instruments into its legislative, procedural and administrative system. In the case of torture, preventive arrangements were of fundamental importance.

74. His delegation welcomed the progress made by the Working Group responsible for drafting an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, under which a system of preventive visits to places of detention would be set up. The Group's mandate should be renewed so that it could complete its work.

75. The spirit of consensus that had prevailed throughout the proceedings, should be carried over into the system of visits itself. Preventive visits would not necessarily be connected with allegations of torture, and the whole system would have to be based on the principle of cooperation and effectiveness. The visiting experts should be able to circulate freely, talk to detainees in private, and contact freely relatives, lawyers, doctors and NGOs.

76. The expert's report should be drawn up on the basis of the facts found, taking account of any comments made by the State concerned, and then be officially transmitted to the State with any recommendations deemed necessary. Publication of the report without the consent of the State concerned should occur only when the State had manifestly failed to cooperate. The protocol should be financed out of the United Nations regular budget.

77. Without suggesting that underdevelopment was an excuse for failing to comply with the protocol's requirements, he thought it should be recognized that the level of human and financial resources available to a State inevitably had an effect on the living conditions of detainees. His delegation therefore supported the South African proposal for the establishment of a voluntary fund to improve the status of detainees.

78. Mr. SELEBI (Observer for South Africa) said that, although torture could never be justified under any circumstances, the practice continued unabated. Its prevention must be one of the cornerstones of any society concerned to promote and protect human rights. His country's Constitution contained provisions against torture and legislation, provided that the perpetrator of any act of torture could be held responsible officially and in a private capacity, that no information obtained through torture could be used as evidence, and that cases of torture were to be prosecuted under the criminal offence of "assault".

79. In his latest report (E/CN.4/1996/35), the Special Rapporteur, whose work his Government supported, had mentioned allegations of torture in South Africa. His Government had investigated those allegations, which it took very seriously. Investigation of some cases was at an advanced stage, in others, members of the police had been charged, while, in yet other cases, the complainants had declined to file charges. A full response to all the allegations would shortly be made to the Special Rapporteur, and the document would be available to any interested party.

80. It was important that the international community should provide support to victims of torture. His Government had thus, for the first time, made a modest contribution to the United Nations Voluntary Fund for the Victims of Torture.

81. His delegation welcomed the progress made by the Working Group elaborating an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, since it believed that a system of inspection of places of detention was a very important measure to prevent torture and other ill-treatment. The Group should continue its constructive work and, in an atmosphere of good will, should be able to complete that work at its next session.

82. Mr. AL-ABOUD (Observer for Saudi Arabia) said that his country, the site of the Two Holy Shrines and the Qibla, was proud of its system of government based on the Shari'a, which more than 1 billion Muslims viewed as the true source of security, truth and justice. The Shari'a could not be subjected to anyone's judgement, since it was God's law.

83. The allegations made by some NGOs against Saudi Arabia were designed to undermine its judicial system and combat the Islamic law to which it was committed. Certain parties had described judgements issued by courts in Saudi Arabia as torture and had shamelessly called upon the Kingdom not to carry out sentences provided for by Islam.

84. If a Shari'a court delivered a sentence, the competent authorities were obliged to implement it. In any case, after being found guilty in a lower court, a suspect could appeal, first to an appeal court and then to the court of cassation. Nobody was incriminated unless proved guilty. Both the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the corresponding Convention stipulated that torture did not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.

85. His Government was not opposed to what others chose for themselves as means of guaranteeing their security and stability and was always ready to consider any justifiable complaint based on a mistake or personal misconduct, but it could not allow anybody to attack its values or its religion.

86. Mr. HINDLEY (Afro-Asian Peoples Solidarity Organization) said that the Mohajirs in Pakistan were being depicted as the "enemy within" in order to bolster national self-confidence. Nevertheless, the fact that the political party representing the Mohajirs continued to receive wide support at the ballot box should legitimize its cause internationally. The current conflict between that party and the Government of Pakistan was exacerbated by criminal elements profiting from the general confusion originally stemming from the use of Karachi as a conduit for arms deliveries to the anti-Soviet forces in Afghanistan. The European Parliament had adopted a resolution on the subject of the extrajudicial executions, tortures and disappearances, that had occurred and the situation was well-documented in a recent Amnesty International report.

87. The prime responsibility of the Government of Pakistan was to break the spiral of violence by curbing the excesses of its forces. The resolution of the conflict was vital for the future of Pakistan, which was unlikely to reap the benefits of trade liberalization if its chief port was paralysed and the very people whose entrepreneurial skills could act as a catalyst felt excluded and persecuted.

88. Ms. FAYOLLE (International Prison Watch) said that her organization was concerned about torture inflicted during detention in Morocco. Although progress had been made in the human rights field there some 30 persons regarded as political prisoners were still being held, not all political exiles who had applied for a passport to return to the country had received one, and the general amnesty had turned out to be a series of partial and individual pardons. Little progress had been made in tracing missing persons and death certificates had not been issued for all the persons who had died at Tazmamart, while those who had survived were in receipt of an inadequate and precarious monthly sum. There was still no news of political and trade union militants or of Saharan civilians who had disappeared many years previously.

89. Forced or involuntary disappearances fed on secrecy, and the officials responsible went unpunished. The head of a secret torture centre had even been sent to represent Morocco in the Committee against Torture, while the commander of the Tazmamart Centre was enjoying a peaceful retirement.

90. Mr. SENTURIAS (World Alliance of Reformed Churches) said his organization was deeply concerned at the cases of torture and ill-treatment of detainees in Equatorial Guinea. A presidential pardon had been granted to persons sentenced by court martial for their links to the political opposition, but the international community should continue to urge the Government of Equatorial Guinea to make greater efforts to improve the human rights situation there.

91. Notwithstanding some very positive political progress in the Philippines, unjust political and economic structures were still keeping the people poor. Action to improve that situation was often met by force entailing violations of human rights. His organization agreed with the Philippine Commission on Human Rights that giving additional powers to law-enforcement agencies would be counterproductive if not dangerous and open the door to martial law. Despite the Government's obvious desire to improve the situation and alleviate poverty, many violations of human rights, had been committed in the implementation of the Philippine Medium-Term Development Plan. Many of the recommendations by the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on torture had not been implemented by the Government, despite its international obligations.

92. It was reassuring to learn that peace talks with Muslim and Communist rebels were continuing and it was to be hoped that solutions to the root causes of those conflicts could be found so that a just and lasting peace could be attained. In any case, the Commission should urge the Government of the Philippines to redouble its efforts to improve its human rights record.

The meeting rose at 1 p.m.